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In the Supreme Court of the United States

OCTOBER TERM, 1993

FEDERAL DEPOSIT INSURANCE CORPORATION, PETITIONER

v.

CHARLES P. COCKE, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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44 pp

QUESTION PRESENTED

Whether federal law establishes the standard for determining when the adverse domination doctrine tolls the statute of limitations on claims brought against allegedly wrongdoing officials of a failed federally insured financial institution by the FDIC as successor to the receiver for the institution.

PARTIES TO THE PROCEEDING

In addition to the respondent named in the caption, respondents include Richard E. Blair, John E. Harn, II, Lloyd B. Ramsey, Preston L. Walker, Julius F. Fogel, Terry B. Light, Light & Harrison, P.C., and John E. Harrison. As explained in note 3, *infra,* however, the question presented does not affect the lower court's disposition of the claims against respondents Fogel, Light, Light & Harrison, P.C., and Harrison (in his capacity as attorney).

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The Solicitor General, on behalf of the Federal Deposit Insurance Corporation, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in these cases.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra,* 1a-17a) is reported at 7 F.3d 396. The orders of the district court (App., *infra,* 20a-22a, 23a-26a, 27a, 28a-30a, 31a-33a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 15, 1993. A petition for rehearing was denied on December 21, 1993. App., *infra,* 18a-19a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. These cases involve activities of respondents connected with McLean Savings & Loan Association; each respondent was affiliated with or employed by that institution for all or a portion of the period from 1984 through 1988. On July 8, 1988, the Federal Savings & Loan Insurance Corporation (FSLIC) was appointed receiver of that institution. In connection with a sale of the institution from the receiver to a third party, FSLIC acquired potential claims of the institution against respondents. The Federal Deposit Insurance Corporation (FDIC) succeeded to those claims in its capacity as manager of the FSLIC Resolution Fund when FSLIC was abolished in 1989. See App., *infra*, 3a-4a & nn.2-3; 12 U.S.C. 1821a(a) (Supp. IV 1992); FDIC C.A. Br. 13-14.

2. The FDIC entered into tolling agreements with respondents, preserving a filing date of June 5, 1991, for the purpose of determining whether any complaint was timely, and then filed three separate complaints against respondents in late 1991 and 1992.[1] The complaints alleged that respondents had breached duties that they owed to the institution, which had caused the institution to suffer monetary losses.[2] In particular, the complaint alleged that, among other things, the institution improperly made

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[1] The June 5, 1991, date was significant because it was less than three years after the date that a federal receiver was appointed for the institution. Under 12 U.S.C. 1821(d)(14) (Supp. IV 1992), the statute of limitations for tort claims brought by the FDIC as receiver is three years from the later of (a) the date that the FDIC was appointed receiver or (b) the date on which the cause of action accrues.

[2] The complaints also named as defendants Thomas J. Leonard, III and Frank M. Howard. The FDIC has entered into settlement agreements with those parties. Those individuals were dismissed from the proceedings below and thus are not parties to the proceedings in this Court. See App., *infra*, 5a.

unsecured loans to an unprofitable financial service subsidiary without securing the required regulatory approvals, and that in 1986 the board of directors of the institution approved a dividend for shareholders even though the institution's financial position at that time made the dividend inappropriate. The complaint also alleged that this and other misconduct contributed to the failure of the institution. See App., *infra,* 4a-5a.

Some of the defendants in the first of the three complaints, styled *FDIC* v. *Leonard* (specifically, respondents Blair, Harrison, Harn, Light, and Light & Harrison, P.C.), filed motions for summary judgment contending that the complaint was barred by the statute of limitations. At a hearing on the motions, the district court stated its view that the FDIC's claims would be barred if the limitations period provided by state law had expired before appointment of a federal receiver. Applying Virginia law, the court concluded that the claims were governed by Virginia's one-year statute of limitations for personal actions. Because the last act or omission challenged by the FDIC occurred in April of 1987, and because a federal receiver was not appointed until July of 1988, the court concluded that the claims were barred. The court rejected the FDIC's argument that the adverse domination doctrine tolled the state limitations period, stating that "[t]his in my view is not the type of adverse domination that was present in [other cases where the doctrine was applied]." May 1, 1992, Tr. 81-83, C.A. App. 113-115. After the hearing, the district court entered an order granting the motions and dismissing those parties as defendants. App., *infra,* 27a.

The district court subsequently granted similar motions by the other respondents who were named as defendants in the *Leonard* complaint (App., *infra,* 28a-30a, 31a-33a), and then similar motions by respondents Cocke and Fogel,

who were named as defendants in the other two complaints (App., *infra,* 20a-22a, 23a-26a).

3. The court of appeals consolidated the FDIC's appeals from the three cases and affirmed with respect to the issues raised in this petition. App., *infra,* 1a-17a. The court rejected the FDIC's argument that federal law was relevant to the statute of limitations issue, stating that "the FDIC wishes to advance a state-law cause of action, and must be governed by the Virginia courts' and legislature's interpretations of that action." App., *infra,* 8a. Although the FDIC's brief (at 22-23) cited the Tenth Circuit's decision in *Farmers & Merchants National Bank* v. *Bryan,* 902 F.2d 1520, 1523 (1990), for the proposition that "federal courts * * * have recognized the need for a federal common law rule of adverse domination," the court of appeals did not cite or refer to *Bryan* in its analysis.

Interpreting Virginia law, the court agreed with the district court's conclusion that a one-year limitations period should apply. App., *infra,* 9a-11a. The court then considered the FDIC's reliance on the doctrine of adverse domination. The court concluded that Virginia had not adopted the doctrine of adverse domination, but instead applied a similar doctrine of equitable estoppel that precludes a defendant from raising a statute of limitations defense upon proof that the defendant intentionally misled the plaintiff to prevent the plaintiff from discovering the tort. The court remanded the cases to allow the district court to consider whether the FDIC could prove such intentional misconduct. App., *infra,* 11a-13a.[3]

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[3] The court of appeals also accepted the FDIC's argument that a longer statute of limitations applied to the claims against respondent Harrison in his capacity as attorney for the institution and to its claims against Light & Harrison, P.C. Accordingly, the court of appeals reversed the dismissal of those claims. App., *infra,* 14a. The claims against those parties therefore can proceed without regard to the ques-

4. The court of appeals denied the FDIC's petition for rehearing and suggestion for rehearing en banc without dissent. App., *infra*, 18a-19a.

REASONS FOR GRANTING THE PETITION

1. These cases present substantially the same question as the recent decision of the Fifth Circuit in *FDIC* v. *Dawson*, 4 F.3d 1303 (1993). Like the panel of the Fourth Circuit in these cases, the *Dawson* court held that (a) state law rather than federal law governs the question whether the adverse domination doctrine tolled the statute of limitations on a claim acquired by a federal agency as receiver against officials of a failed financial institution; and (b) state law requires the FDIC to prove something more than negligence on the part of a majority of the directors in order for the limitations period to be tolled. 4 F.3d at 1308-1309, 1311-1313.

Today we are filing a petition for a writ of certiorari seeking review of the Fifth Circuit's decision in *Dawson*.[4] As we explain in more detail in that petition, the analysis of the Fourth and Fifth Circuits does not adequately accommodate the important federal interests in determining when the FDIC can sue malfeasant officials of failed depository institutions. Furthermore, the holdings of those courts that state, rather than federal, law governs the tolling issue squarely conflict with the Tenth Circuit's decision of the same question in *Farmers & Merchants National Bank* v. *Bryan*, 902 F.2d 1520, 1522 (1990). These

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tion presented by the petition. On the other hand, the court of appeals accepted separate grounds for dismissing the claims against respondents Light (App., *infra*, 14a-15a) and Fogel (App., *infra*, 16a). The FDIC does not challenge those dispositions.

[4] We have provided counsel for respondents a copy of our petition in *Dawson*.

decisions also call into question more than $1.8 billion in claims that the FDIC and the Resolution Trust Corporation are pursuing nationwide. Accordingly, the question warrants review by this Court. Nevertheless, because the Court's disposition of *O'Melveny & Myers* v. *FDIC*, cert. granted, 114 S. Ct. 543 (1993) (No. 93-489) (set for argument March 21, 1994), may shed light on the proper analysis to be used in deciding *Dawson* and these cases, we suggest in our petition in *Dawson* that the Court may wish to hold *Dawson* pending its disposition of *O'Melveny*. The same course would be appropriate here.

2. We also suggest in the petition in *Dawson* that plenary review of the question presented here and in *Dawson* would be appropriate if the Court's disposition of *O'Melveny* does not lead it to remand the cases for further consideration by the lower courts. For two reasons, we believe that *Dawson* would constitute a better vehicle than these cases for such plenary review. First, the decision in these cases is not final; the court of appeals has remanded the matter to the district court. That disposition leaves open the possibility that the FDIC ultimately will be able to recover even under the more onerous standard adopted by the Fourth Circuit. The Fifth Circuit's decision in *Dawson*, on the other hand, affirms a final judgment of dismissal, thus more squarely presenting the question on which we seek review.

Second, the opinion of the court of appeals in *Dawson* expressly considers and rejects the analysis and decision of the Tenth Circuit in *Bryan*. See 4 F.3d at 1308-1309. The court of appeals in these cases, by contrast, neither acknowledges nor discusses *Bryan* in its opinion (although, as we noted above, the FDIC had relied on *Bryan* in its brief). Accordingly, the existing conflict with the Tenth Circuit is more squarely posed by the decision of the Fifth Circuit in *Dawson*. We believe, therefore, that *Dawson* should be the primary vehicle for review of the

issue presented by these cases and that our petition in these cases should be disposed of as appropriate in light of the Court's disposition of the petition in *Dawson*.

CONCLUSION

The petition for a writ of certiorari should be held pending the Court's disposition of *O'Melveny & Myers* v. *FDIC*, cert. granted, 114 S. Ct. 543 (1993) (No. 93-489) (set for argument March 21, 1994), as well as the Court's disposition of the petition we are filing today in *FDIC* v. *Dawson*. The cases then should be disposed of as appropriate in light of the Court's disposition of those two cases.

Respectfully submitted.

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MARCH 1994

APPENDIX A

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

No. 92-1987

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF-APPELLANT

v.

CHARLES P. COCKE, DEFENDANT-APPELLEE

No. 92-1994

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF-APPELLANT

v.

JULIUS F. FOGEL, DEFENDANT-APPELLEE

No. 92-1996

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, RECEIVER OF MCLEAN SAVINGS AND LOAN
ASSOCIATION, PLAINTIFF-APPELLANT

v.

LLOYD B. RAMSEY; PRESTON L. WALKER; RICHARD E. BLAIR; JOHN E. HARN, II; TERRY B. LIGHT; JOHN E. HARRISON; LIGHT & HARRISON, PC, DEFENDANTS-APPELLEES

AND

THOMAS J. LEONARD, III; FRANK M. HOWARD; JULIUS F. FOGEL, DEFENDANTS

Argued May 6, 1993
Decided Oct. 15, 1993
Amended By Order Filed Nov. 16, 1993

Before: ERVIN, Chief Judge, MURNAGHAN, Circuit Judge, and BUTZNER, Senior Circuit Judge.

OPINION

ERVIN, Chief Judge:

The Federal Deposit Insurance Corporation ("FDIC"), acting as receiver of McLean Savings & Loan Association ("McLean"), elected to proceed with a breach of duty action against various parties affiliated with the savings and loan. The district court summarily disposed of all the FDIC's claims as untimely filed under the applicable Virginia[1] statute of limitations. This appeal presents the issue whether federal or Virginia law may operate to toll the running of the statute of limitations on any of the FDIC's claims. Concluding that Virginia's equitable estoppel doctrine could toil the running of the statute of limita-

[1] Because McLean was incorporated and operated under the laws of Virginia, the state's laws also govern the nature and viability of any tort actions against McLean directors or affiliates.

tions making some or all of the FDIC's claims timely, we reverse the district court's dismissal of the claims on the basis of the running of the statute of limitations. To the extent that individual defendants contend that action against them is inappropriate on grounds other than the statute of limitations, we will discuss their situations in turn.

I

The issues raised by this appeal revolve largely around interpretation and application of law; therefore, only a limited familiarity with the facts is necessary. McLean was a state-chartered, federally-insured stock savings association located in McLean, Virginia. By participating in the federal insurance program, McLean subjected itself to federal examinations and, in troubled times, oversight. For several years, McLean operated without incident, making traditional home mortgages. As interest rates became more competitive, McLean sought additional ways to generate revenues, however. In 1981 McLean formed McLean Financial Corporation ("MFC"), a financial service subsidiary to McLean, to originate, broker, buy, sell, and service residential real estate loans. Many of McLean's directors also sat on the board of MFC.[2]

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[2] Lloyd B. Ramsey was a director of McLean from 1977 to 1988 and Chairman of the Board of Directors from 1977 to 1986. Preston L. Walker was a director of McLean from 1977 to 1988, as well as a director of MFC from 1981 to 1987. Richard E. Blair served as a McLean director from 1977 to 1988 and as a MFC director from 1985 to 1987. John E. Harn, II was a director of McLean from 1980 to 1988 and a director of MFC from 1981 to 1987. Julius F. Fogel was a director of McLean from 1977 to 1987. Charles P. Cocke was a McLean director from 1977 to 1988 and a director of MFC from 1982 to 1987. John E. Harrison served as a director of McLean from 1977 to 1988 and Chairman of MFC's Board of Directors from 1982 to 1987. Har-

MFC, though initially very profitable, began to suffer losses in 1985, prompting McLean to attempt to bolster the subsidiary's slumping financial performance. McLean began making unsecured loans to MFC, allegedly without seeking the required regulatory approval. In 1986 the McLean board also approved the payment of dividends to McLean shareholders despite the institution's financial inability to make such payments. This misconduct together with other asserted fraudulent and unscrupulous transactions propelled McLean into receivership on July 8, 1988.[3] As receiver the FDIC retained any potential claims the corporation could have maintained against its former directors, officers, or attorneys for their breaches of duty owed to the corporation. Therefore, on November 29, 1991, the FDIC brought the first of three lawsuits alleging breaches of duty based on the conduct involving the management of McLean and MFC.[4] The first action was filed against Thomas J. Leonard, III, Frank M. Howard,[5] [illegible]d B.

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rison also was one of two principles [*sic*] in the law firm of Light & Harrison, P.C., which served as general counsel to both McLean and MFC from 1981 to 1987.

[3] On July 8, 1988, the Federal Savings & Loan Insurance Corporation ("FSLIC") was appointed as receiver. The FSLIC then took possession of all the assets and obligations of both McLean and its subsidiary MFC, including potential claims against former directors, officers, and attorneys. The FDIC became the successor-in-interest to these claims upon the dissolution of the FSLIC pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), 12 U.S.C. § 1821a(a).

[4] The last act of misconduct allegedly occurred in April 1987. The FDIC asserts generally that when the actions giving rise to its complaints occurred, McLean was dominated and controlled by its directors and officers, some of whom also controlled MFC.

[5] Howard and Frank were dismissed from this appeal on October 8, 1992 and are not party to the current proceedings. *FDIC v. Ramsey*, No. 92-1996, order at 2 (4th Cir. Oct. 8, 1992).

Ramsey, Preston L. Walker, and Richard E. Blair—former directors of McLean and MFC—for breach of their fiduciary duty of care to the corporations for which they served. Amending this complaint, the FDIC added similar charges against John E. Harn, II, McLean's president; John E. Harrison, McLean director and attorney; Terry B. Light, McLean attorney; and Light & Harrison, P.C., general counsel to McLean. After failed attempts to add additional directors through amendment, the FDIC filed separate complaints against Charles P. Cocke and Julius F. Fogel. The FDIC entered into tolling agreements with the directors and attorneys named in the three actions to establish the filing of its complaints on June 5, 1991, for purposes of invoking the statute of limitations.

In the district court, the FDIC claims were maintained as *FDIC v. Leonard* (CA-91-1773-A); *FDIC v. Cocke* (CA-92-350-A); and *FDIC v. Fogel* (CA-92-496-A). Defendants in *FDIC v. Leonard* brought a motion to dismiss or alternatively for summary judgment. The district court granted summary judgment for the defendants on the basis that the applicable Virginia statute of limitations had run before the FDIC acquired rights in the cause of action. *See FDIC v. Leonard,* No. CA-91-1773-A, orders (E.D.Va. Jul. 20, 1992 & May 2, 1992) (dismissing claims against Thomas J. Leonard, III and Frank M. Howard); order (E.D.Va. May 20, 1992) (dismissing claims against Lloyd B. Ramsey and Preston L. Walker); order (E.D.Va. May 1, 1992) (dismissing claims against Richard E. Blair, John E. Harn, II, Terry B. Light, John E. Harrison, and Light & Harrison, P.C.). The district court, recognizing the factual similarity of *FDIC v. Cocke* and *FDIC v. Fogel,* dismissed them on the basis articulated in *FDIC v. Leonard. See FDIC v. Cocke,* No. CA-92-350-A, order (E.D.Va. Aug. 12, 1992); *FDIC v. Fogel,* No. CA-92-496-A, order (E.D.Va. June 17, 1992). The

FDIC appealed the summary disposition of all three cases. We consolidated the cases and deal with them as one in this opinion.

II

A

Federal banking regulation, in an effort to mitigate the costs to the taxpayer of bank and savings and loan failures, permits the FDIC to pursue any claims a corporation might have against its officers or directors once the FDIC becomes receiver of that corporation. *See* 12 U.S.C. § 1821(d); *Texas Am. Bancshares, Inc. v. Clarke,* 954 F.2d 329, 339 (5th Cir. 1992). These breach of duty causes of action are hybrid in nature—authorized and enabled by state law, but appropriated by the FDIC as a means of redress for violations of various federal banking acts. Therefore, the analysis required to determine the viability of such an action is somewhat tedious, incorporating components of both state and federal law. The most problematic aspect of these actions is the determination of whether a statute of limitations bars the claim. This determination proves taxing because the applicable state statute of limitations controls whether the action is viable when the right to bring the action inures to the FDIC, while the applicable federal statute of limitations controls whether the action was timely filed.

To determine whether a statute of limitations bars the FDIC's actions in this case, we must first answer the following question: Did the Virginia statute of limitations run between the time the action accrued and the date of receivership? To answer this question, we must determine the applicable Virginia statute of limitations and the effect, if any, of any provisions of Virginia law to toll the running of the statutory period.

The FDIC attempts to add a gloss to our analysis by suggesting that federal law must guide and inform the application of the state statute of limitations. The FDIC cites *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979), for this proposition, urging us, in applying the state statute of limitations, to incorporate a uniform federal tolling rule patterned after the doctrine of adverse domination. In *Kimbell Foods* the Supreme Court discussed when federal common law must govern federal actions complicated by state substantive components. The Court noted that

> [t]o resolve this question, we must first decide whether federal or state law governs the controversies; and second, if federal law applies, whether this Court should fashion a uniform . . . rule or incorporate state . . . law.

Id. at 718, 99 S.Ct. at 1453.

In *Kimbell Foods* the Court was called upon to determine "whether contractual liens arising from certain federal loan programs take precedence over private liens, in the absence of a federal statute setting priorities." *Id.* at 718, 99 S.Ct. at 1453. The Court held:

> That the statutes authorizing these federal lending programs do not specify the appropriate rule of decision in no way limits the reach of federal law. It is precisely when Congress has not spoken "in an area comprising issues substantially related to an established program of government operation," that *Clearfield* directs federal courts to fill the interstices of federal legislation "according to their own standards."

Id., at 727, 99 S.Ct. at 1457 (quoting *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 593, 93 S.Ct. 2389, 2397, 37 L.Ed.2d 187 (1973) and *Clearfield Trust*

Co. v. United States, 318 U.S. 363, 367, 63 S.Ct. 573, 575, 87 L.Ed. 838 (1943)) (citations omitted). The Court went on to adopt the states' systems of priority as the governing federal common law. *Id.* at 729, 99 S.Ct. at 1459.

In this case an extensive program of federal regulation does not enable the FDIC's breach of duty cause of action. Although federal law allows the FDIC, as receiver, to bring McLean's claims, the claims are uniquely state-law causes of action acquired through a wholesale takeover of McLean's assets. If it were not for Virginia common law's prohibition against breaches of fiduciary duty by corporate directors, the FDIC would have no claims to bring. Therefore, this case does not present the situation in which federal statute authorizes and outlines federal activity, but neglects to furnish a crucial provision that would effectuate the federal activity more appropriately.

Under the *Kimbell Foods* analysis, the FDIC has failed to demonstrate the presence of a federal program suffering from the absence of a controlling piece of federal law. Instead, the FDIC wishes to advance a state-law cause of action, and must be governed by the Virginia courts' and legislature's interpretations of that action. *See White v. FDIC,* 122 F.2d 770, 774-75 (4th Cir. 1941) (looking to Virginia law to determine whether Virginia's statute of limitations is tolled during period of director wrongdoing), *cert. denied,* 316 U.S. 672, 62 S.Ct. 1043, 86 L.Ed. 1747 (1942).

B

The FDIC argues on appeal that the district court incorrectly applied Virginia's statute of limitations in two material ways. First, the FDIC contends that the district court chose the incorrect Virginia statutory bar to apply to its breach of duty claims. In addition, the FDIC suggests

that the district court erred by not applying, as a matter of federal common law, the doctrine of adverse domination to toll the Virginia statute of limitations for the period of time during which the directors who are defendants in this action controlled McLean's and MFC's boards. Because we reject the FDIC's argument that tolling, in this case, should be governed by federal law, we limit our analysis to the applicable statute of limitations and its ability to be tolled under Virginia law.

Therefore, the first step toward our decision whether a statute of limitations bars the FDIC's action is the determination of what statute of limitations Virginia applies to breach of duty actions. The FDIC disagrees with the decision the district court made to apply Virginia's one-year statute of limitations to its causes of action. Virginia's one-year statute of limitations applies to "[e]very personal action, for which no limitation is otherwise prescribed." Va.Code Ann. § 8.01-248 (Michie 1992). The FDIC argues in favor of Virginia's longer contracts or injury to property statute of limitations. For actions based in contract, the statute of limitations is three years for oral contracts and five years for written contracts. *Id.* § 8.01-246. "Every action for injury to property . . . shall be brought within five years after the cause of action accrues." *Id.* § 8.01-243(B).

The Virginia courts have not addressed directly which statute of limitations applies to a breach of fiduciary duty cause of action. Its courts, however, have refused to apply a contracts statute of limitations to a breach of duty action. *See Winston v. Gordon,* 115 Va. 899, 80 S.E. 756, 762 (1914). Eliminating the contracts statute of limitations provided by section 8.01-246, we still are faced with the decision whether the general one-year or the five-year tort statute of limitations is more appropriate.

The FDIC suggests that the five-year statute of limitations for actions alleging injury to property governs this

case because its injury derives from the decline in the value of McLean resulting from the directors' and officers' breach of their duty. The Supreme Court of Virginia has not addressed this issue; however, by looking at the contexts in which the Supreme Court of Virginia has applied section 8.01-243(B), we logically can conclude that the Virginia court would not apply section 8.01-243(B) as the FDIC suggests.

The Virginia court has applied section 8.01-243(B) consistently to those cases that involve one party's actions directly against another party's property. *See, e.g., Bader v. Central Fidelity Bank,* 245 Va. 286, 427 S.E.2d 184, 187 (1993) (holding that section 8.01-243(B) applies to action for conversion of an instrument); *Vines v. Branch,* 244 Va. 185, 418 S.E.2d 890, 894 (1992) (holding that section 8.01-243(B) applies to action for damages resulting from continuous trespass to personal property); *Eagles Court Condominium Unit Owners Ass'n v. Heatilator, Inc.,* 239 Va. 325, 329, 389 S.E.2d 304, 306 (1990) (holding that section 8.01-243(B) could apply to claim for damages resulting from an allegedly defective product); *Hampton Rds. Sanitation Dist. v. McDonnell,* 234 Va. 235, 239, 360 S.E.2d 841, 843 (1987) (holding that section 8.01-243(B) applies to action to recover for damage to property caused by sewer discharge); *Lavery v. Automation Management Consultants, Inc.,* 234 Va. 145, 154, 360 S.E.2d 336, 342 (1987) (holding that section 8.01-243(B) applies to action seeking damages for unauthorized use of trade name). In summary, when a defendant's alleged conduct was directed at the plaintiff's property, and not at the plaintiff personally, the conduct constitutes an injury to property governed by section 8.01-243(B). *See Vines,* 244 Va. at 191, 418 S.E.2d at 894; *Pigott v. Moran,* 231 Va. 76, 80, 341 S.E.2d 179, 182 (1986).

In the instant case, the action involves the FDIC's allegations against McLean's directors that they breached a duty owed to McLean to act in its best interests. The FDIC's cause of action arises not merely because of a decline in McLean's property value; many prudent and well-reasoned actions by a corporation's board may cause immediate declines in share value or lead to the disposal of valuable assets. The FDIC maintains the breach of duty action because McLean's board has acted in a manner that purportedly personally wronged McLean; indeed, the availability of a breach of duty action derives from the personification of a corporation. Therefore, the one-year personal, not the five-year property, statute of limitations is most appropriate for a breach of duty cause of action, as the district court correctly decided.

Under section 8.01-248's one-year statute of limitations, the FDIC must have acquired its interest in the action within one year from the date the action accrued. If Virginia's statute of limitations runs before the FDIC gained its right to the action through receivership, then the FDIC gained a stale claim and may not pursue it. Although the district court held that the FDIC's claims became stale in just such fashion, the FDIC counters on appeal that the one-year statute of limitations should have been tolled under the doctrine of adverse domination.

Under the doctrine of adverse domination, a statute of limitations is tolled on an action against director/officer misconduct so long as a majority of the board is controlled by the alleged wrongdoers. The doctrine rests on the theory that if the wrongdoers "controlled the corporation through a majority of stock ownership and control of the directorate[,] there [would] consequently [be] no one to sue them." *White v. FDIC,* 122 F.2d 770, 775 (4th Cir. 1941), *cert. denied,* 316 U.S. 672, 62 S.Ct. 1043, 86 L.Ed. 1747 (1942).

Virginia courts have not adopted the doctrine of adverse domination expressly. We, however, may be guided by another approach that Virginia takes to the tolling of a statute of limitations. A Virginia code provision details that

> When the filing of an action is obstructed by a defendant's . . . using any other direct or indirect means to obstruct the filing of an action, then the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought.

VA.Code Ann. § 8.01-229(D) (Michie Supp. 1993). The Supreme Court of Virginia has supplemented this statutory provision by suggesting that the doctrine of equitable estoppel may preclude a defendant from raising expiration of the period of limitations as a defense. *See, e.g., Wilson v. Butt,* 168 Va. 259, 190 S.E. 260, 265 (1937); *Sadler v. Marsden,* 160 Va. 392, 168 S.E. 357, 360-61 (1933); *City of Bedford v. James Leffel & Co.,* 558 F.2d 216, 217-18 (4th Cir. 1977) (construing Virginia law).

Although equitable estoppel in Virginia generally does not require an intentional misrepresentation, *e.g., T . . . v. T . . . ,* 216 Va. 867, 872-73, 224 S.E.2d 148, 152 (1976) (applying equitable estoppel to prevent the imposition of the statute of frauds), the Virginia Supreme Court has required intentional conduct to allow the doctrine to toll the running of a statute of limitations. The court held that

> [c]onstructive fraud is not such as will toll the running of the statute of limitations. The character of fraud necessary to toll the statute must be of a variety involving moral turpitude. A defendant must intend to conceal the discovery of the cause of action by trick or artifice and must have thus actually concealed it from the plaintiff in order for the exception to apply.

Richmond Redev. & Hous. Auth. v. Laburnum Constr. Corp., 195 Va. 827, 840, 80 S.E.2d 574, 582 (1954); *see also Hawks v. DeHart*, 206 Va. 810, 814, 146 S.E.2d 187, 190 (1966).

Based on these provisions of Virginia statutory and case law, we hold that a statute of limitations is tolled until a person intentionally misled by a putative defendant could reasonably discover the wrongdoing and bring action to redress it. Therefore, we conclude that the district court erred by rejecting outright the application of a tolling mechanism to the facts of this case. Under Virginia's doctrine of equitable estoppel, however, the FDIC will have to do more than show that all of McLean directors were implicated in the wrongdoing, and that it was unable to sue until it became the corporation's receiver. The FDIC also will have to show that the directors concealed their wrongdoing from McLean, MFC, and their shareholders, the parties from whom the FDIC derived its interest in this lawsuit, during the period after the last act of alleged misconduct until the FDIC became receiver. It will be for the district court, on remand, to determine the extent to which equitable estoppel tolls Virginia's one-year statute of limitations.[6]

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[6] In addition to the issues concerning the Virginia statute of limitations discussed herein, the FDIC argued on appeal the timeliness of its action under the federal statute of limitations. Because the district court limited its rulings to the Virginia statute of limitations, any discussion we would offer on the federal statute of limitations would be advisory in nature. On remand, the district court will have an opportunity to apply the federal statute of limitations; therefore, we refrain from addressing the issue now, assured that, if need be, the district court's reasoned application of the law will provide us a more appropriate means of review.

III

The FDIC has included McLean's attorneys in its cause of action. On appeal, it asserts two erors in the district court's dismissal of the attorney defendants. First, the FDIC alleges that the district court applied the incorrect statute of limitations to its claims based on attorney malpractice. The district court applied the Virginia one-year statute of limitations to these claims. The Supreme Court of Virginia, however, has held that "actions for legal malpractice are governed by the limitations periods applicable to actions for breach of contract." *See MacLellan v. Throckmorton,* 235 Va. 341, 343, 367 S.E.2d 720, 721 (1988); *Oleyar v. Kerr,* 217 Va. 88, 90, 225 S.E.2d 398, 400 (1976). In this case either the three- or five-year contract statute of limitations will apply based on a finding as to whether the alleged malpractice was governed by a written or oral contract. To the extent that Harrison's alleged wrongdoing stems from his actions as a director, the one-year statute will apply; to the extent the allegations stem from his service as McLean's attorney, the longer statutory period will apply. The longer period also will apply to Light & Harrison, P.C.

Second, the FDIC alleges that the district court erred in suggesting that the FDIC's claims against Terry B. Light are derivative and therefore barred by the Virginia Code's Professional Corporations chapter. The FDIC's claim is without merit. Section 13.1-547[7] of the Professional Cor-

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[7] Section 13.1-547 states:

> The provisions of this chapter shall not be construed to alter or affect the professional relationship between a person furnishing professional services and a person receiving such service either with respect to liability arising out of such professional service or the confidential relationship between the person rendering the professional service and the person receiving such professional

orations chapter clearly maintains the traditional grounds for liability between a member of a professional corporation and her clients, while exculpating a member for the negligent activities of other members of the corporation. Va.Code Ann. § 13.1-547 (Michie 1989). Case law reinforces this concept; construing section 13.1-547, we have noted "that professionals practicing in a professional corporation enjoy limited personal liability for wrongful acts committed by their fellow professionals in the corporation." *Bettius & Sanderson, P.C. v. National Union Fire Ins. Co.*, 839 F.2d 1009, 1013 (4th Cir. 1988). Light will be liable to the FDIC only to the extent that he is responsible for Light & Harrison, P.C.'s share of the liability, if any. Light cannot be held personally liable if he was not personally responsible for any of the work done for McLean. Therefore, the district court's dismissal of Light on this alternate basis was correct.

IV

Two defendants, John E. Harrison and Light & Harrison, P.C., made a motion to us to dismiss the FDIC's appeal as to them on the ground that they have been released

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service, if any, and all such confidential relationships enjoyed under the laws of this Commonwealth, whether now in existence, or hereafter enacted, shall remain inviolate. A director, officer, agent or employee of a professional corporation shall not, by reason of being any director, officer, agent or employee of such corporation, be personally liable for any debts or claims against, or the acts or omissions of the corporation or of another director, officer, agent or employee of the corporation, but the corporation shall be liable for the acts or omissions of its director, officer, agents, employees and servants to the same extent to which any other corporation would be liable for the acts or omissions of its directors, officers, agents, employees and servants while they are engaged in carrying on the corporate business.

Va. Code Ann. § 13.1-547 (Michie 1993).

from the cause of action. The FDIC released two other defendants, Thomas J. Leonard, III and Frank M. Howard, pursuant to settlement agreements that also released Leonard's and Howard's "heirs, assigns, successors, and any former or current agents, employees, servants, affiliates, attorneys and other representatives," from all claims which the FDIC "may now have, or may ever have had against [Leonard or Howard] for damages . . . alleged to have been suffered or to be suffered by [McLean] or MFC . . ." The release operates to relieve Harrison and Light & Harrison, P.C. of liability only as to advice and services rendered under the direct employ of Leonard or Howard. To the extent that the FDIC alleges liability against Harrison and Light & Harrison, P.C. based on their own relationships with McLean and not through the relationships of Leonard and Howard, Harrison and Light & Harrison, P.C. are not released. Therefore, we conclude dismissal would not be proper and so order.

V

Julius F. Fogel raises the following issue unique to him. He asserts that the FDIC failed to comply with its tolling agreement with him by not bringing action against him on or before February 24, 1992. After reviewing the tolling agreement in question, the entries in the district court's docket, and the parties' briefs and arguments on this point, we conclude that Fogel should be dismissed on the basis of the FDIC's failure to comply with the tolling agreement.

VI

In summary, we affirm the district court's decision to apply Virginia's one-year statute of limitations to the actions against Charles P. Cocke, Lloyd B. Ramsey, Preston

L. Walker, Richard E. Blair, John E. Harn, II, and John E. Harrison, in his capacity as a director, but reverse the district court's determination outright that no tolling principle affects the running of that statutory period. We reverse the district court's application of a one-year statute of limitations to the actions against John E. Harrison in his capacity as McLean's attorney and against Light & Harrison, P.C., and we deny the motion to dismiss of Harrison and Light & Harrison, P.C. We affirm the dismissal of all proceedings against Julius F. Fogel and Terry B. Light. In so doing, we remand for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 92-1987(L)
(CA-92-350-A)

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF-APPELLANT

versus

CHARLES P. COCKE, DEFENDANT-APPELLEE

FILED: December 21, 1993

ON PETITION FOR REHEARING WITH
SUGGESTION FOR REHEARING IN BANC

Appellees John E. Harrison and Light & Harrison, P.C. filed a petition for rehearing with suggestion for rehearing in banc. Appellant filed a petition for rehearing with suggestion for rehearing in banc and appellees filed answers to appellant's petition. No member of the Court requested a poll on the suggestions for rehearing in banc, and the original judicial panel voted to deny rehearing in banc.

The Court denies both petitions for rehearing with suggestions for rehearing in banc.

Entered at the direction of Chief Judge Ervin with the concurrence of Judge Murnaghan and Senior Judge Butzner.

For the Court

/s/ Bert M. Montague

Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 92-350-A

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENT OF THE
UNITED STATES, PLAINTIFF

v.

CHARLES P. COCKE, DEFENDANT

[FILED Aug. 12, 1992]

FINAL ORDER

THIS CAUSE came before the Court on the Motion to Dismiss of Defendant, Charles P. Cocke and the acknowledgments of Plaintiff, Federal Deposit Insurance Corporation, set forth herein; and

IT APPEARING TO THE COURT that Plaintiff and Defendant acknowledge that the factual allegations and legal theories presented by Plaintiff against Defendant in the Complaint filed in this action are substantially the same as the factual allegations and legal theories presented by Plaintiff against various other named Defendants in the companion action before this Court known as *Federal Deposit Insurance Corporation v. Leonard, Thomas J., III, et al.*: Civil Action No. 91-1773-A ("Leonard Case");

IT FURTHER APPEARING TO THE COURT that on May 1, 1992, this Court granted Motions for Summary Judgment filed by Defendants, Blair, Harn, Light, Harrison, and Light & Harrison, P.C. in the Leonard Case;

IT FURTHER APPEARING TO THE COURT that Plaintiff and Defendant acknowledge that the rulings made by the Court on the Motions for Summary Judgment in the Leonard Case govern the Court's consideration of the Motion to Dismiss of Defendant in this action;

IT FURTHER APPEARING TO THE COURT that Defendant was an officer and director of McLean Savings and Loan Association during the period of time from 1977 through January, 1988, and a director of McLean Financial Corporation during the period of time from 1982 through September, 1987;

IT FURTHER APPEARING TO THE COURT that claims alleged against Defendant in the Complaint filed by Plaintiff arose no later than April, 1987;

IT FURTHER APPEARING TO THE COURT that the claims alleged against Defendant in the Complaint filed by Plaintiff were governed by the one (1) year statute of limitations set forth in § 8.01-248 of the Code of Virginia, 1950, as amended;

IT FURTHER APPEARING TO THE COURT that by virtue of the foregoing, the statute of limitations for the claims alleged in the Complaint filed by Plaintiff herein expired no later than April, 1988;

IT FURTHER APPEARING TO THE COURT that on July 8, 1988, the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as receiver of McLean Savings and Loan Association;

IT FURTHER APPEARING TO THE COURT that by virtue of the tolling agreements executed by Plaintiff and Defendant, the Complaint in this action was deemed filed on June 5, 1991; and

IT FURTHER APPEARING TO THE COURT that by virtue of the foregoing, the claims alleged in the Complaint are barred by the statute of limitations set forth in § 8.01-248 of the Code of Virginia, 1950, as amended.

NOW THEREFORE, for the reasons set forth herein, it is hereby ADJUDGED, ORDERED and DECREED that the Motion to Dismiss of Defendant, Charles P. Cocke, should be and hereby is granted and that the Complaint filed by Plaintiff, Federal Deposit Insurance Corporation, should be and hereby is dismissed with prejudice. Plaintiff expressly notes its objections to all of these rulings in the Leonard Case and in this action and this order is without prejudice to Plaintiff's rights to appeal all such rulings.

ENTERED this 12th day of August, 1992.

/s/ Claude M. Hilton
United States District Judge

WE ASK FOR THIS:

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Suite 700
McLean, Virginia 22102
(703) 448-6600

By: /s/ William T. Freyvogel
WILLIAM T. FREYVOGEL
Virginia State Bar No. 15072,
Counsel for Defendant

SEEN AND OBJECTED TO:

BAYH, CONNAUGHTON, FENSTERHEIM & MALONE, P.C.
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(202) 289-8860

By: /s/ Leslie W. Lickstein
DAVID M. MALONE, Esq. (VA Bar # 005044)
LESLIE W. LICKSTEIN, Esq. (VA Bar # 17898)
Counsel for Plaintiff

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 92-496-A

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF

v.

JULIUS FOGEL, DEFENDANT

[FILED Jun. 17, 1992]

CONSENT ORDER

THIS CAUSE came before the Court on a Consent Motion to Dismiss of plaintiff Federal Deposit Insurance Corporation ("FDIC") and defendant Julius Fogel, M.D., and the acknowledgements set forth herein.

IT APPEARING TO THE COURT that the plaintiff and the defendant acknowledge that the factual allegations and legal theories presented by the plaintiff's Complaint in this action are substantively identical to the factual allegations and legal theories presented by the plaintiff against various other defendants named in the separate action *FDIC v. Leonard, et al.*: Civ. 91-1773-A (the "*Leonard* action"), currently pending in this Court;

IT FURTHER APPEARING TO THE COURT that on May 1, 1992, this Court granted Motions for Summary Judgment filed by defendants, Blair, Harn, Light, Harrison, and Light & Harrison, P.C. in the *Leonard* action;

IT FURTHER APPEARING TO THE COURT that plaintiff and defendant acknowledge that the rulings made by the Court on the Motions for Summary Judgment in the *Leonard* action govern the Court's consideration of the Motion to Dismiss of defendant Dr. Fogel in this action;

IT FURTHER APPEARING TO THE COURT that the claims alleged against the defendant in the plaintiff's Complaint arose no later than April 1987;

IT FURTHER APPEARING TO THE COURT that the defendant was retired from the board of directors of McLean Savings & Loan Association in May 1987;

IT FURTHER APPEARING TO THE COURT that the claims alleged against the defendant in the plaintiff's Complaint were governed by the one-year statute of limitations set forth in § 8.01-248 of the Code of Virginia, 1950, as amended;

IT FURTHER APPEARING TO THE COURT that by virtue of the foregoing, the statute of limitations for the claims alleged in the plaintiff's Complaint herein expired no later than April 1988;

IT FURTHER APPEARING TO THE COURT that on July 8, 1988, the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as receiver of McLean Savings and Loan Association;

IT FURTHER APPEARING TO THE COURT that the Complaint in this action was filed after April 1988;

IT FURTHER APPEARING TO THE COURT that by virtue of the foregoing, the claims alleged in the Complaint are barred by the statute of limitations set forth in § 8.01-248 of the Code of Virginia, 1950, as amended;

IT FURTHER APPEARING TO THE COURT that the plaintiff takes exception and objects to the Court's ruling in the *Leonard* action but acknowledges that it would apply equally to claims against defendant Julius Fogel in this action.

NOW, THEREFORE, for the reasons set forth herein and upon the record as a whole in this action and in the *Leonard* action, it is hereby ADJUDGED, ORDERED and DECREED that the Motion to Dismiss of defendant Julius Fogel, M.D., should be and hereby is granted and that the Complaint filed by plaintiff the FDIC should be and hereby is dismissed with prejudice; and it is further

ORDERED that nothing herein should be construed to constitute a waiver, or evidence of a waiver, by either party of any argument or ground for disposition of this action outside the issues specifically ruled upon herein.

ENTERED this 17 day of June, 1992.

/s/ Albert V. Bryan, Jr.
ALBERT V. BRYAN, JR.
United States District Judge

WE ASK FOR THIS:

MILLER, CASSIDY, LARROCA & LEWIN
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By: /s/ Douglas F. Curtis
RANDALL J. TURK
DOUGLAS F. CURTIS
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Counsel for Defendant

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By: /s/ Leslie W. Lickstein
LESLIE W. LICKSTEIN
(VA Bar #17898)
Counsel for Plaintiff

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 91-1773-A

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF

v.

THOMAS J. LEONARD, III, ET AL., DEFENDANTS

[FILED May 1, 1992]

ORDER

For the reasons stated from the bench, it is hereby ORDERED that the motion of the defendants Richard Blair, John Harrison, John Harn, Terry Light, and Light & Harrison, P.C., for summary judgment is granted, and they are dismissed as defendants in this action.

/s/ Albert V. Bryan, Jr.
ALBERT V. BRYAN, JR.
United States District Judge

Alexandria, Virginia
May 1st, 1992

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 91-1773A

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF

v.

THOMAS J. LEONARD, III, FRANK M. HOWARD, JOHN E. HARN, II, LLOYD B. RAMSEY, PRESTON L. WALKER, RICHARD E. BLAIR, JOHN E. HARRISON, TERRY B. LIGHT, AND LIGHT & HARRISON, P.C., DEFENDANTS

ORDER OF DISMISSAL

THIS MATTER came on the motion of defendants Thomas J. Leonard and Frank M. Howard to dismiss Counts I, II, III and IV of the Amended Complaint; and

WHEREAS, upon consideration of the parties' briefs and oral argument on May 1, 1992, this Court entered an Order granting the motions to dismiss or in the alternative for summary judgment of defendants John E. Harrison, Terry B. Light, Light & Harrison, P.C., John E. Harn, II and Richard E. Blair based upon the applicable statutes of limitations; and

WHEREAS, the ruling of the Court made from the bench on May 1, 1992, and embodied in this Court's Order

of May 1, 1992, would apply equally to defendants Howard and Leonard as to Counts I, II, III and IV of the Amended Complaint; and

WHEREAS, the plaintiff, as evidenced by its counsel's endorsement hereto, takes exception and objects to the Court's ruling but acknowledges that it would apply equally to defendants Howard and Leonard as to Counts I, II, III and IV of the Amended Complaint; and

WHEREAS, this Court's ruling would have no effect upon Count V (Money Due and Owing) against Howard and Leonard, now therefore, it is hereby

ORDERED that Summary Judgment is granted as to Counts I, II, III and IV of the Amended Complaint and dismissed as to defendants Thomas J. Leonard and Frank M. Howard is granted for the reasons set forth in the Court's May 1, 1992, ruling from the bench and the Court's Order of May 1, 1992.

ENTERED this 8th day of May, 1992.

/s/ Albert V. Bryan, Jr.
Judge ALBERT V. BRYAN, JR.
Judge, United States District Court

WE ASK FOR THIS:

COHEN, GETTINGS, & DUNHAM

/s/ Harvey B. Cohen
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Counsel for Defendant Frank M. Howard

WUERKER & TRIARHOS, P.C.

/s/ Jack L. Wuerker

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Counsel for Defendant Thomas J. Leonard, III

SEEN:

BAYH, CONNAUGHTON, FENSTERHEIM & MALONE, P.C.

By: /s/ Leslie W. Lickstein

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Federal Deposit Insurance Corporation

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action No. 91-1773A

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CORPORATE CAPACITY AS AN INSTRUMENTALITY OF THE
UNITED STATES, PLAINTIFF

v.

THOMAS J. LEONARD, III, ET AL., DEFENDANTS

[FILED May 20, 1992]

ORDER OF DISMISSAL

THIS MATTER came on the motion of defendants Lloyd B. Ramsey and Preston L. Walker to dismiss Counts I, II, III and IV of the Amended Complaint; and

WHEREAS, upon consideration of the parties' briefs and oral argument on May 1, 1992, this Court entered an Order granting the motions to dismiss or in the alternative for summary judgment of defendants John E. Harrison, Terry B. Light, Light & Harrison, P.C., John E. Harn, II and Richard E. Blair based upon the applicable statutes of limitations; and

WHEREAS, the ruling of the Court made from the bench on May 1, 1992, and embodied in this Court's Order

of May 1, 1992, would apply equally to defendants Ramsey and Walker as to Counts I, II, III and IV of the Amended Complaint; and

WHEREAS, the plaintiff, as evidenced by its counsel's endorsement hereto, takes exception and objects to the Court's ruling but acknowledges that it would apply equally to defendants Ramsey and Walker as to Counts I, II, III and IV of the Amended Complaint; it is hereby

ORDERED that Counts I, II, III and IV of the Amended Complaint are dismissed as to defendants Lloyd B. Ramsey and Preston L. Walker for the reasons set forth in the Court's May 1, 1992, ruling from the bench and the Court's Order of May 1, 1992.

ENTERED this 20th day of May, 1992.

/s/ Albert V. Bryan, Jr.
Judge ALBERT V. BRYAN, JR.
Judge, United States District Court

WE ASK FOR THIS:

KILCARR & VOLZER

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SEEN:

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